

RESOLUTION NO.

WHEREAS, on March 29, 2018, a group of concerned residents filed an initiative petition containing 31,062 signatures, which petition proposed an ordinance that would require that “there shall be both a waiting period and voter approval by election before CodeNEXT (or any subsequent comprehensive revisions of the City’s land development laws) is legally effective; and

WHEREAS, on April 23, 2018, the Austin city clerk certified that the petition met the requirement for the minimum number of valid signatures of qualified voters to be considered sufficient, that minimum number being 20,000; and

WHEREAS, in accordance with Article IV, § 4 of the Austin City Charter, upon receipt of an initiative petition certified by the city clerk to be sufficient, the Austin City Council has the obligation to either (a) pass the initiated ordinance without amendment within ten (10) days after the date of certification or (b) order an election and submit the initiated ordinance without amendment to a city-wide vote on the next allowable municipal election date; and

WHEREAS, on April 26, 2018, the Austin City Council voted 6-4 (with one member absent) to not pass the initiated ordinance without amendment within ten (10) days after the date of certification to the council; and

WHEREAS, the next allowable municipal election date is November 6, 2018; and

WHEREAS, questions have been raised about the legality of the proposed ordinance and whether the power of initiative may be used concerning matters relating to zoning; and

WHEREAS, as acknowledged by the Texas Supreme Court in *Glass v. Smith* and *Quick v. City of Austin*, the power of initiative is a power reserved by the residents of a municipality, and any city charter provisions pertaining to such power should be liberally construed in favor of the residents' reserved power of initiative; and

WHEREAS, as explained in *Quick v. City of Austin*, any purported legislative limitation or withdrawal of the power of initiative cannot be implied unless the provisions cited are "clear and compelling;" and

WHEREAS, Chapter 211.015 of the Texas Local Government Code (Zoning Referendum in Home-Rule Municipality) provides procedures for the repeal and adoption of a municipality's zoning regulations, including the use of referendum processes for the initial adoption of zoning regulations and the ability of municipalities to make the adoption of zoning ordinances conditional upon the ordinance receiving the approval of the municipality's voters; and

WHEREAS, there are no explicit provisions within Chapter 211 that speak to the procedures and regulations applicable to a comprehensive revision of a municipality's land development code; and

WHEREAS, while there have been court cases that have addressed the applicability of initiatives with respect to individual rezoning amendments, there are no cases of authority in Texas case law that have addressed the applicability of Chapter 211.015 with regard to the repeal and replacement of the entirety of a municipality's land development code (i.e., a comprehensive revision); and

WHEREAS, notwithstanding any argument regarding the relationship between zoning regulations and the power of initiative, there are several components

to both the petition (e.g., the waiting period) and CodeNEXT (e.g., water quality standards, administrative procedures, etc.) that are well beyond the scope of zoning; and

WHEREAS, without a “clear and compelling” provision that would prevent Austin residents from using their reserved power of initiative, it is the obligation of the City Council to respect the will of the signatories of the petition and place the aforementioned petition-sponsored ordinance on a ballot for voter consideration; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

In deference to the reserved power of Austin residents to use the initiative petition process, the City Council hereby expresses its intent to place the aforementioned petition-sponsored ordinance on the November 6, 2018 ballot.

BE IT FURTHER RESOLVED:

The City Manager is directed to prepare, for City Council’s consideration at its June 14, 2018 City Council meeting, draft language for all necessary ordinances, actions and approvals to place the aforementioned petition-sponsored ordinance on the November 6, 2018 ballot.

ADOPTED: _____, 2018 **ATTEST:** _____

Jannette S. Goodall
City Clerk